



Organization for Security and Co-operation in Europe
Office of the Representative on Freedom of the Media

**ANALYSIS OF THE PROGRAMME ON THE TRANSITION FROM
ANALOGUE TERRESTRIAL TELEVISION TO DIGITAL
TERRESTRIAL TELEVISION IN THE REPUBLIC OF MOLDOVA**

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July 2012

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Recommendations

- The preparation of the Programme is a good step in the planning of digitalization and needs to be followed by an open discussion and a real possibility for interested parties to exchange their opinions and discuss all aspects of the Programme. The importance of timely changes to legislation must be stressed.
- The Programme is generally well written and based on research and statistics. However, its main problem is the unclear incentives for various stakeholders to bear the considerable costs incurred by the digital switchover. This should be considered more carefully and clearly outlined in the final document.
- Where the Programme discusses various options for practical arrangements, there is a need for the appropriate bodies to make such choices soon and offer clear suggestions on what to choose and why (rather than just enumerating possible choices).
- It is essential to take a citizen's perspective and concentrate on the actual accessibility of digital broadcasting to the audience, which includes the issue of the receiving equipment. The social aspects need to be considered; primarily the question of financial support to acquire decoders. There needs to be a clear and transparent plan on how the support can be given, to whom and based on what criteria. It is important that people are not cut off from broadcasting while, at the same time, the support should not be too burdensome for the state.
- It may be necessary to financially support broadcasters to ensure that plurality and diversity do not suffer if broadcasters are not able to pay for the transition. Such support must be proportional and non-discriminatory. The Programme does not deal with this issue.
- The costs of digitalization should not be unduly borne by citizens, so certain price controls or similar measures should be considered, at least for the transition period. If there are no incentives or realistic ways for different parties to cover costs, there is a risk these will be passed on to end users.
- The process for licensing should ensure that a diverse range of channels is available.
- The proper legal basis and regulatory oversight are needed to guard against possible competition restrictions, obligations for private parties to enter into agreements, and to regulate pricing and conditions of access to transmission facilities.
- The question of the legitimate expectations of existing broadcasters needs to be considered. This may need more careful formulation and extensive discussions with broadcasters.
- The Programme could additionally specify the importance of politically and financially independent public service broadcasting with high-quality and objective programming. Moldova should guarantee the fundamental role of public service media and make it universally accessible after the transition has been completed.

Executive Summary

Developing a digitalization plan is in line with the best international practices. The planned switchover date in Moldova, 17 June 2015, meets its international obligations, but only at the latest time possible, so the tight timetable must be strictly followed. Moldova opts for the MPEG -4 technology, which is appropriate. The Programme states that digitalization will lead to the development of a digital economy. The change-over process creates costs for all concerned and the development of this economy may take time and be problematic, so in the transition period state incentives may be needed. Such incentives are not properly reflected in the Programme. It is commendable that the need to create an attractive market is mentioned, as the market should primarily deal with providing digital programme content (with a role for the public service broadcaster), decoders and access to platforms as well as other digitalization issues. However, the market is likely to be imperfect and state measures may be needed to make it function.

The Programme refers to the statistics on the structure and characteristics of the population, as well as to the types of access to broadcasting and the number of households that will need special receiving devices. The penetration of cable and satellite is not very great so many people will need them and the financial support to provide them must be determined soon. The Programme contains detailed information about broadcast content providers, but it is weak on explaining how the digitalization will be able to make content more diverse and pluralistic. The planned gradual introduction of channel allocations is good but allocations for regional areas appear to limit the current number of regional broadcasters. It is not explained if and how this will be dealt with to avoid negative consequences.

The Programme is not clear on how broadcasters will be able to carry the costs of the switch-over. Especially for small regional broadcasters this will be a challenge. The reference to broadcasters' own funds and no extra cost for the state may be overly optimistic. Sharing of infrastructure and similar measures will most likely not be sufficient to reduce expenses. Determining the price of network use is essential and regulatory oversight is also needed. Market players should be free to operate to the maximum extent, but the regulator must step in to ensure that a fair result is obtained.

Various entities affected by digitalization are highlighted: content providers, network operators, retail companies; and audiences. The separation between content providers and transmission facility providers (multiplex operators) is important: If they are part of the same legal entity, separation of financial issues, including accounting matters, is essential and must be legislatively mandated. The cost of creating and operating a multiplex, as well as other costs for broadcasters, may be significant. This shows the need for support or incentives. The objective to minimize the costs is mentioned along with the need to let market players enter into voluntary agreements on how infrastructure is used, with compulsory measures imposed as a last resort. However, it is unclear whether such initiatives will be sufficient.

There is no general need to amend all communications legislation because of the digitalization but, at the same time, existing laws and licensing systems must fit the new situation. Legislative changes must be made in a timely and orderly fashion and regulatory authorities must have the proper legal authority upon which to base licensing decisions, as well as the requirements for infrastructure-sharing, spectrum management and other issues.

Introduction

As the Representative on Freedom of the Media points out in the Foreword to the OSCE Guide to Digital Switchover (Vienna, 2010)* *“If carried out properly, the digital switchover can safeguard human rights, including freedom of the media and access to information. If all parties involved in the process co-operate, including broadcasters, producers, resellers and consumer associations, the result is a media landscape that protects plurality of opinion and freedom of expression.”* In addition to pointing out the potential benefits of digitalization, this statement includes several important points, such as the need to carry out the process properly and the need for co-operation of all concerned parties.

One of the risks of digitalization is that it may, due to the costs and complexity of the process, lead to monopolization and a reduction in the number of broadcasters instead of increased plurality and diversity, especially in the transitional phase.

Broadcast policy and digitalization are recognized as part of general economic, social and industrial policies of the country, according to the Programme on the Transition from Analogue Terrestrial Television to Digital Terrestrial Television [in the Republic of Moldova] (hereinafter “the Programme”). This is the correct approach and should be commended. Digitalization should not be viewed in isolation if the benefits of this new technology are to be fully used.

This analysis generally but not totally follows the structure of the Programme and is based on the English translation of it, provided by the Office of the OSCE Representative on Freedom of the Media. The laws mentioned in the Programme have not been analyzed separately. Recommendations are made and passages where there may be need for more clarity are pointed out. Many of the suggestions should be helpful in the implementation of the Programme, rather than just analyzing the details.

General Provisions

One important step in digitalization as pointed out by OSCE and by the Council of Europe is that there has to be a proper plan. The analyzed document meets this requirement.

It is correctly pointed out in the Programme that the obligation to switch over to digital is an international obligation, thus there is no choice of whether the change should happen or not, but how to effectuate the change. The possibilities provided by the new technology and respect for customer needs are mentioned. Digitalization will lead to improvements for all, but the transition may be complicated. The date, 17 June 2015, meets international obligations and is, hopefully, realistic. It is better to select a realistic date than one that cannot be adhered to. However, the date latest possible under the international obligations, which means that the timetable is strict, which is not ideal. Certain hurriedness may be expected.

* <http://www.osce.org/fom/73720> (English); <http://www.osce.org/node/73721> (Russian)

The Programme expresses the presumption that the digitalization will lead to the development of a digital economy, which is noteworthy. This is indeed to be hoped for but, at the same time, it must be admitted that the change-over process entails costs for all concerned and the development of a digital economy may thus take time and be problematic. It is essential to point this out that in a transitional period various state incentives are needed to get the digital economy started. These incentives can be state aid, concessions and so on. Since digital terrestrial television as a channel for interactive administrative services, it is important to monitor the penetration of the new medium because it can be a channel for essential services.

It is positive that the Programme and the decision accompanying it specifically mention the market and the need to create an attractive market. Indeed, it should primarily be the market that deals with the provision of digital programme content (with an important role maintained for public service broadcasting). The market also should dictate distribution of decoders, access to platforms for broadcasters as well as all other elements of digitalization. At the same time, it must be recalled that the market is imperfect and may not be able to provide everything at a reasonable price. The need for state intervention should be limited in time.

Competition laws need to be taken into consideration when designing any intervention in the market. However, this does not mean that competition laws prevent support to broadcasters. There are many current examples of support in the form of state aid or other measures. Such measures are examined under competition legislation and there are a number of cases from the European Union on the issue. These cases show that under best European standards the proportional and non-discriminatory nature of support is essential.

The Programme contains statistics as a basis for considerations on how many people will need special receiving devices. As penetration of cable and satellite is not very deep and many people will need new devices. The Programme correctly points out the importance of considering the structure and characteristics of the population as well as types of access to broadcasting. From this basis, correct suppositions must be made and followed up on. It will be necessary for most households to get new television receivers – 95 percent according to the report. The cost for these devices may be prohibitive in a predominantly low-income country. This is one of the main challenges of digitalization, as this new technology should not limit access to broadcasting. Cable, satellite and similar technologies had a penetration of 22.5 percent in 2011, which means that more than three-quarters of the population need new equipment. Moldova is not a wealthy country and it can be assumed that many people will not be able to afford the cost of new equipment without assistance. As mentioned in the Action Plan, planning for assistance is important and should begin very soon. It is known from other countries that it is not easy to decide how and to whom assistance should be given as regular considerations of social security support and similar may not be appropriate.

Broadcast content providers

The Programme contains detailed information about broadcast content providers, their coverage area, ownership and other information. There are currently only four national stations, 14 regional stations and 17 licences have been awarded to local stations. Apart from the public service broadcaster, TRM, content is mainly focused on entertainment and contains a large proportion of rebroadcasting of content from neighbouring states. Specialized channels have problems breaking into the market. It is

positive that the plan is based on information about the current situation, but problematic that it does not explain how digitalization will be able to help to make content more diverse and pluralistic. The Programme states that investments into broadcast networks have substantially increased recently, but it does not state what these investments were used for, in particular, if they were allocated to preparations for digitalisation.

The plan is to have seven free-to-air channels on the first multiplex. This represents an increase of the existing number of nationwide channels and can be regarded as an improvement. It is important that there is an improvement so that the benefit is felt. The way to select the channels varies between countries – it may be done by the state, by the regulator in different processes or by the multiplex operator according to market principles. Some regulatory intervention in the beginning may be necessary to ensure a diverse selection. There needs to be an objective and non-discriminatory manner in which to do this. The issue is connected with the need for broadcasters to be able to carry costs and the question of dealing with existing licensees.

One essential element of the Programme is how broadcasters will be able to carry the costs for the digital switch-over. This is not addressed in the Programme. Especially for small, regional broadcasters this will be an important challenge. Reference to using their own funds without state aid appears to be overly optimistic. Sharing of infrastructure and other such measures will most likely not be enough to cover extra expenses. There is always a danger with digitalization that some broadcasters are not able to afford the switch and, as a result, plurality and diversity are actually reduced at least during the transition. The fact that the number of regional channels will be reduced, according to the Programme, illustrates this risk. The number of national channels will be increased so there are various possibilities to ensure plurality and diversity and a positive situation for both audience and broadcasters, but in the current Programme it is not set forth if and how such positive effects will be achieved.

The Programme states that it is a problem that only two digital terrestrial television transmitters are being tested by the main owner of broadcast transmission facilities. The urgency and importance of an upgrade and change of transmission systems is well recognized in the Programme, so what is needed now is to act rapidly and decisively to deal with the issues identified.

Technical Issues

This analysis does not analyse technical solutions, so only a few general comments are made on this matter. Moldova opts for the MPEG-4 technology, which is appropriate. Only the very early digitalizing nations opted for MPEG-2. MPEG-2 is not compatible with MPEG-4 whereas the other way around they are compatible. There is thus no reason to now use less advanced technologies and at the same time there is no reason use even more advanced technology since it will be more expensive. Also, there are many benefits from using the same technology as that is used in other countries. This permits a larger market for decoders and other equipment.

The Programme appropriately points out the different groups affected by digitalization, such as content providers, network operators, retail companies and, of course, the audience. The Programme correctly sets out different possible models for co-operation between the affected partners but apparently without making a choice or pointing out what is most likely to be the selected model. As

time is short, it will be necessary to quickly involve all concerned partners in deciding exactly how to proceed. The choice is up to every country; even among EU Member countries there is no required model and the choice depends on, for example, what the organizational situation for analogue broadcasting transmission was already in the country (separate transmission companies or broadcasters owning facilities). However (as the Programme correctly states), the separation between content providers and transmission facility providers (multiplex operators) is important, so if they are part of the same legal entity, laws requiring a separation of business activities, including accounting matters, is essential and legislation must require this.

The fact that there is a transmission company that serves different broadcasters may be a positive thing as the digital landscape is such that content providers normally do not own their infrastructure. This can facilitate the management of the new structure. The fact that infrastructure needs to be modernized is correctly pointed out in the Programme and it stipulates that the infrastructure company will be charged with creating the first multiplex. The Programme says that it should “*take over and transmit in transparent economic and non-discriminating manner the national public TV stations, as well as the existing private providers of television and multimedia services with a significant coverage and audience index*”. The key words here are “take over”. However this is done, it must take into consideration legitimate expectations and any property rights of the broadcast stations (public or private). It is possible that the wording refers to providing a service only but, in any case, the process must be transparent and non-discriminatory as stressed in the Programme.

The cost of creating a multiplex and for using it and other costs may add up to significant sums of money, which underlines the point made about the possible need for support or some other incentives. One positive aspect of the Programme is that it insists on the need to use existing infrastructure and to encourage exchange and sharing of facilities. Indeed, such co-location and sharing may be made compulsory, but should in that case follow only after consultations and after the parties have had the chance to agree on terms among themselves and the regulator stepping in only as a last resort. In the Specific Programme Objectives, the objective to minimize costs is mentioned as well as the important principle to primarily let market players enter into voluntary agreements on how infrastructure is used, with compulsory measures imposed as a last resort. But it is less clear if such initiatives will be sufficient.

The price of network use is essential and here regulatory oversight is needed. The words in the English translation of the programme, that it should be “regulated strictly by relevant Government authorities,” can have a double meaning, but it is presumed here that the phrase refers to the need for a proper and effective regulatory oversight rather than for detailed and strict content of the regulations. Market players should be able to decide matters as much as possible, but the regulator must step in to ensure that a fair result is obtained. As it is mentioned in the Programme that the legislation is harmonized with the EU Directive 2002/21/EC, it should be possible to safely presume that the words indeed refer to proper regulatory oversight of market players as reflected in that Directive.

The importance of the retail companies providing the equipment is pointed out. Interoperability and standard setting is generally according to best European practice to be made by the market, with minimal interference by regulators. Only if the market does not function in this respect it may be needed to intervene since interoperability is essential for the choice of users. A large market (because the standards are the same in other countries) makes it more attractive for companies and should help ensure that decoders of different prices are available on the market, so that most people can afford them without special support. This has worked quite well in many of the European states that have digitalized.

Regulatory framework

There is no need to change broadcasting and communications legislation in general because of digitalization, but it is very important to ensure that the existing laws fit the new situation. The Programme highlights a current licensing system that is not well suited to digital broadcasting. Changes to the law must be made in a timely and orderly fashion to coincide with decisions on digitalization. The urgency and importance of regulatory changes are highlighted in the Programme and this can only be underlined: Changes that permit digitalization must be prepared and passed into law very soon. The regulatory authorities must have the proper legal basis for licensing decisions in the digital environment as well as for infrastructure sharing, spectrum management and other issues.

The author of this analysis has on various occasions analysed Moldovan broadcast legislation and one of the issues pointed out was the importance of a coherent system where applicants do not have to apply to multiple bodies for permits. Here no analysis of the legislation referred to in the Programme is made, but the same general comment can be made: It is important that the various bodies involved have a coherent and well-functioning system for co-operation so that applicants do go through overly bureaucratic procedures. The necessary regulatory changes caused by digitalization can be an opportunity to improve the regulatory system, but it is important to note that such improvements are not automatic and digitalization should not be seen as a way to deal with other possible problems in the broadcast field. Other reforms should continue as well. In digital broadcasting, the licences for transmission and for content provision are separate. However, close co-operation between different regulatory bodies (in countries that do not have converged regulators) remains essential.

The Digital Plan and the Digital Dividend

The digital dividend, a possibility to fit much more content into the frequency spectrum for uses other than broadcasting, is one of the key benefits of digitalization. To explain this should be an important part of any public campaign because it helps people to understand why digitalization is beneficial.

The planned gradual introduction of the channel allocations is good. However, as mentioned above, the number of allocations for regional areas appears to limit the current number of broadcasters. It is not explained if and how this is intended to be dealt with to avoid the negative consequences of existing broadcasters losing their possibility to broadcast. Also, in this part of the plan, some statements are made on various possibilities in case different solutions are chosen (if DVB-T2 is implemented immediately) but without saying how and when such choice should be made. With the tight timetable, everyone concerned needs to have the parameters very soon.

Where the Programme mentions the use of available spectrum (a digital dividend) for broadband especially in rural areas, it is not clear if the text refers to the EU decision on this or if this has been decided also for in Moldova. Such use is good and may be very useful but it needs to be seen in the context of the Moldovan situation, where demand for such access may differ from many EU countries. The use of the digital dividend and balancing different uses of spectrum should be appropriate for the country, with a forward-looking but, at the same time, realistic perspective.

Problem Identification and Specific Programme Objectives

The SWOT analysis in the Programme is useful and highlights possible weaknesses and threats. The possible limited capacity of government and certain groups to do what is needed for real access and the possible low interest from potential investors are seen as serious issues that are considered from a practical standpoint. It appears that although they are highlighted in the SWOT analysis, consequences are not drawn from this.

The enhancement of plurality and quality is mentioned (point 3 of the problem identification). These are important goals and the diversity is important and not just a multitude of channels. There is no automatic result that digitalization leads to new broadcasters and new content, even if this is the desired longer-term result. It is important not to be overly optimistic about the interest of market players alone in providing the kind of valuable content that is desirable, especially given high costs during the initial phase. One important point: There should not be overly high expectations on what can be achieved by regulation. The possibilities to demand certain content through regulation are limited in a society with freedom of expression and free media. Broadcasters can be required to have some types of programming (like news or children's programmes) to obtain a licence and the composition of free-to-air platforms can require varied content, but there still have to be broadcasters that are able, interested and available to provide content and the main decisions on content must be made by broadcasters.

As mentioned above, it is essential to take the public's perspective into account and concentrate on real, actual accessibility to digital broadcasting for individuals, which includes the issue of receiving equipment. Point 6 in the problem identification is important. The social aspects of accessibility to broadcasting need to be considered, primarily the question of financial support for set-top boxes. There needs to be a clear plan on how the support can be given, to whom and based on what criteria. The system must be transparent. It is important that people are not cut off from broadcasting while, at the same time, the financial contribution cannot be too expensive for the state, which means that it needs to be carefully balanced. This will be done by a working group (mentioned above and in the Action Plan), which is good, but the work must start without delay.

In the list of specific programme objectives the same problem as mentioned elsewhere, of vague language ("establish ways" etc.), occurs. As time is short, solutions must soon be found. This is not criticism of the content of the Programme, but an important indicator on how it must be acted upon. Also the reference to market demand may be a bit worrying, as the markets for digital technologies tend to take time to develop. In almost all countries the initial uptake has been disappointing and the market may in fact not work until later, meaning there is a need to consider incentives to "kick-start" the market.

For infrastructure and equipment, although the government in a democratic market economy should not interfere directly with industry or prescribe prices, it can have a dialogue with the industry to see what possibilities there are to lower equipment prices. Technical specifications and standards should, to the extent possible, be adopted internationally to ensure the greatest possible interconnectivity and possibility for goods to move freely in an international market. Standards should be industry-led as much as possible. It is important not to lock the system into standards when there is technological

development, but to be flexible and open to interoperability between standards. This can best be achieved by the industry itself.

People with special needs are mentioned in the Programme, but without any detail of how the improvement will be made and how it will affect them.

Actions to be Undertaken

The list of actions is generally good and makes it easy to get an overview of the Programme. The weaknesses are the same as those mentioned previously. What still lacks is a plan for how to encourage various parties, especially private broadcasters, to invest in digitalization. There are different examples from around Europe mentioned in The OSCE Guide to Digital Switchover. These include significant cuts in operating licence fees paid by commercial television companies. In many countries, including Finland and Austria, the television licence fee paid by households was increased and the income to a large extent was to be handled by the public service broadcaster. Other countries, such as Ireland and Switzerland, turned down requests by public service broadcasters for such increases. The principle of not letting the end-user cover too much of the costs must be kept in mind, as well as the general economic situation of the country and the population.

Many countries have given some form of support to broadcasters, for example Italy, Sweden and Germany (Berlin). The support of these countries has been the subject of scrutiny by the EU competition authorities for possible abuse of competition rules. The European competition organs (the Commission and the Court of Justice) have found that support to private undertakings for digitalization may be permissible, but must be carefully weighed against considerations of proportionality, non-discrimination and real need for the support. If the aid is properly given, it may prove useful and help to create the desired market as well as maintain plurality and diversity.

Annulling licences is another issue to be highlighted in the Action Plan. In this process, legitimate expectations must be considered, especially if licences were given for a long time, while at the same time it must be possible for development to continue. One common solution is to allow broadcasters to broadcast digitally in the first multiplex composition. This appears to be what is intended in Moldova, according to point 3.6 of the Action Plan. If this is not possible, other ways to mitigate possible damage must be sought. If there will be room for the existing channels and some new ones, the problems may not be major. But a number of circumstances may jeopardize this: The broadcasters may not be able to afford the transition; there may not be room for all of them or there may not be room for anything else, in which case the audience will legitimately question to use of the process.

The plan of action concentrates on many different regulatory measures needed. This is good, but at the same time there is a limit to what can be obtained by regulation, as the parties concerned must be able to perform the roles expected of them.

Implementation Stages and Deadlines

The date of the switch-over should be realistic, but it needs to consider the date set by the ITU while ensuring that there is near universal penetration before the switch-off. At the same time, parallel

transmission is expensive and the time for this should be minimized. As mentioned, the timetable is and has to be very strict, as the proposed change-over date is the latest date possible under ITU rules.

The idea of a tender for selecting channels is good, as is the idea of competitive bidding. The emphasis on transparent, economic and non-discriminatory conditions is also positive. The public service broadcaster is provided with the must-carry possibility, in line with best European practice. Another positive point in the Action Plan (that could have been the subject of more attention in the Programme) is the idea of associations for regional and local broadcasters. It is however not clear if and how this can be made an obligation.

Expected Results, Monitoring and Assessment Procedures

The risk with digitalization is that high costs means that there will in fact be fewer broadcasters and thus less diversity and plurality. It is important that no one owner monopolizes the market. Broadcasters that cater to special interests or regional and local broadcasters may need to be supported in a transitory phase.

A weakness with the Programme is that it appears to underestimate costs and overestimate possibilities to cover these through resources other than the state budget. Although it is a commendable approach to primarily rely on the market, the market may for quite a while be imperfect and not able to carry the costs. Some more detail on how money will be found is needed very soon. Public-private partnerships, preferential loans and other subsidies (under state-aid rules), the use of foreign funding (grants or investments) and other measures may all be considered, but this is a bigger task than what the Programme appears to presume. There may be regulatory consequences of whatever solution is found, such as competition law aspects or issues of rules for ownership of broadcasters (regarding foreign ownership or concentrations).

The costs calculated may underestimate the work where there may be an indirect increase of costs even in areas where no expenses as such are foreseen. Reduction or abolishment of the licence fee (as suggested, 1.1) is a common measure to encourage transition, but it cannot be forgotten that it means a reduction of income for the state, at a time when there are extra expenses. If costs should be carried by broadcasters or house owners (like 3.6), incentives as well as the real possibilities for them to carry costs need attention. Otherwise there is a risk that only a few, large broadcasters can afford the process and that some housing areas would not undertake the necessary work. There is a risk of a vicious cycle: Broadcasters cannot afford to digitalize and pay for access to multiplexes, multiplex owners make no money and cannot make the investments they are supposed to.

As for the system for monitoring and periodic comparisons, this is good and it is important to ensure that such systems are properly implemented.